

EXHIBIT D

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September 24, 2021

VIA NYSCEF

Hon. Marguerite A. Grays, J.S.C.
Supreme Court State of New York
Queens County Courthouse
88-11 Sutphin Boulevard
Queens, New York 11435

RE: Star Auto Sales of Queens LLC d/b/a Star Subaru v. Douglas Filardo, et al.
Index No. 717443/2017

Dear Hon. Grays,

Ronald D. Weiss, P.C. represents Defendants, Douglas Filardo, and Subaru Motorsport d/b/a Motor Sports Advertising (hereinafter "Defendants"), in the above-referenced action.

On September 24, 2021 the Appellate Division, Second Department signed an Order to Show Cause brought by the Defendants attached to this letter as "Exhibit A." In the email providing the signed Order to Show Cause, the Associate Deputy Clerk Ken Band, implied that the entire appeal may be decided before the return date on the Order to Show Cause which makes an adjournment of the scheduled inquest essential. As such, Defendants hereby request that the scheduled inquest for Monday September 27, 2021 be adjourned to after October 4, 2021 as that is the return date for the Order to Show Cause.

Thank you.

Very truly yours,

Brandon Dei, Esq.
Ronald D. Weiss, P.C.

cc: Milman Labuda Law Group, PLLC via NYSCEF

EXHIBIT “A”

~~XXXX~~ Appellate Division, Second
Department of the Supreme Court of
the State of New York~~XXXX~~
~~On this 24th day of September 2021~~
~~Monroe Place, Brooklyn, New York~~
~~at the 9:30 day of September 2021~~

~~PRESENT XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXX~~

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – SECOND DEPARTMENT

-----X
STAR AUTO SALES OF QUEENS LLC D/B/A
STAR SUBARU,

Appellate Division Docket
~~XXXX~~ No. 2019-05817

Plaintiff-Appellant,

- against -

EMERGENCY ORDER
TO SHOW CAUSE

DOUGLAS FILARDO AND SUBARU
MOTORSPORTS D/B/A MOTORSPORTS
ADVERTISING,

Defendants-Respondents.

-----X

Upon the annexed affidavit of the Douglas Filardo, a Respondent-Defendant, sworn to on September 24, 2021, and Affirmation of Ronald D. Weiss, Esq., counsel for the Appellant, dated September 24, 2021, the Notices of Appeal filed with the Court, the facts, and circumstances herein, and upon all the pleadings and proceedings heretofore had herein,

LET, STAR AUTO SALES OF QUEENS LLC D/B/A STAR SUBARU (hereinafter “Appellant-Plaintiff”) show Cause before the Appellate Division, Second Department of the Supreme Court of the State of New York, the Courthouse located at 45 Monroe Place, Brooklyn, NY 11201, on the 4th day of October, 2021 at 9:30 in the forenoon of that day or as soon thereafter as counsel can be heard,

WHY AN ORDER SHOULD NOT BE MADE AND ENTERED to stay the Inquest currently scheduled for September 27, 2021 at 2:30 pm to be conducted at the Queens County Supreme Court to determine the allegedly damages sustained by the Appellant-Plaintiff because the Plaintiff has appealed an Order of the lower court which dismissed a majority of the causes of action against the Respondents-Respondents-Defendants and a Decision on the appeal is necessary to clarify the causes of action at issue and to save judicial resources and time; and to stay any and all actions and proceedings for a judgment against the Respondents-Respondents-Defendants in the lower Court, Queens County Supreme Court action bearing Index number: 717443/2017, pending a determination of the appeal; and for such other and further relief as this Court deems just and proper.

SUFFICIENT CAUSE THEREFOR APPEARING, it is ~~heretby~~

~~ORDERED, that pending the hearing and determination of this Order to Show Cause motion, pursuant to CPLR §5519, any actions, proceedings that could cause a judgment to be entered against the Respondents-Respondents-Defendants in the lower court action bearing Index Number: 717443/2017, including, but not limited to the Inquest scheduled for September 27, 2021, are heretby stayed, and it is further~~

~~ORDERED, that pending the hearing and determination of this Order to Show Cause motion, pursuant to CPLR §5519, the Appellant-Plaintiff is stayed from filing any motions or other documents in the lower Court action pending against the Respondents-Respondents-Defendants in order to obtain a Judgment, Inquest or trial, and it is further~~

this
ORDERED, that service of a copy of ~~the~~ Order to Show Cause and the papers upon
was
which it ~~is~~ made on or before September 27, 2021, upon Milman Labuda Law

Group PLLC, counsel for the ~~Appellee~~ Plaintiff, with offices located at 300 Marcus Avenue, Suite 3W8, Lake Success by overnight delivery or email and by uploading a copy of this order to show cause and the papers upon which it was made to NYSCEF under the Appellate Division, Second Departments module, shall be deemed sufficient service thereof.

Dated: Brooklyn, New York
September 24, 2021



HON. Angela G. Iannacci
Associate Justice

NOTE: There is no appearance on the return date. The motion is decided on papers alone.

MILMAN LABUDA LAW GROUP PLLC
3000 MARCUS AVENUE
SUITE 3W8
LAKE SUCCESS, NY 11042

TELEPHONE (516) 328-8899
FACSIMILE (516) 328-0082

Author: Jamie S. Felsen – Member
Direct E-Mail Address: jamiefelsen@mllaborlaw.com
Direct Dial: (516) 303-1391

September 24, 2021

VIA NYSCEF

Hon. Marguerite Grays, J.S.C.
Supreme Court of the State of New York
Queens County Courthouse
88-11 Sutphin Boulevard
Queens, NY 11435

Re: Star Auto Sales of Queens LLC d/b/a Star Subaru v. Douglas Filardo *et al.*
Index No.: 717443/2017
MLLG File No.: 7-2018

Dear Justice Grays

This firm represents the Plaintiff in the above-referenced matter. Plaintiff respectfully submits this letter in response to Defendants' letter filed today at 3:36 p.m. seeking a stay of the inquest scheduled for Monday, September 24, 2021. Defendants' request should be denied and Defendants and their counsel should be sanctioned for making a blatant misrepresentation to this Court.

The e-mail from the appellate division clerk to which Defendants refer and intentionally omitted from their submission does not in any way imply that the appeal will be decided anytime soon. **(A copy of the e-mail is annexed hereto as Exhibit "A").** The e-mail says the complete opposition of what Defendants purport that it says and they should be sanctioned for asserting a baseless argument and intentionally omitting the purported evidence.

Critically, the appellate court **denied** Defendants' motion to stay Monday's inquest for the reasons Plaintiff raised to the appellate court and the appellate court decision denying the motion to stay Monday's inquest is res judicata. **(A copy of an email from Plaintiffs to the clerk asserting its arguments in opposition to the motion to stay is annexed hereto as Exhibit "B").**

Respectfully submitted,

/s/ Jamie S. Felsen

cc: Counsel of Record (via NYSCEF)

EXHIBIT “A”

Jamie Felsen

From: Kenneth Band <kband@nycourts.gov>
Sent: Friday, September 24, 2021 2:44 PM
To: rosemarie@ny-bankruptcy.com; Jamie Felsen
Cc: weiss@ny-bankruptcy.com; Joseph Labuda
Subject: Star Auto Sales v Filardo 2019-05817
Attachments: OSC in Star Auto Sales v Filardo 2019-05817.pdf

Dear Counselors:

A judge signed the order to show cause, and struck the proposed interim relief. A copy of the executed order to show cause is appended hereto as a .pdf.

Service must be effected by the end of Monday. Opposition papers are due by the end of business on 10/4.

I would ask counsel for the appellant to consider whether, if the appeal is decided before the motion is decided, the motion is academic. If the motion becomes academic, please consider withdrawing it.

Take care everyone,
Ken Band

Kenneth Band, Esq.
Associate Deputy Clerk
Supreme Court, Appellate Division, Second Judicial Department
(P) (718)722-6497 (F) (212)419-8457

EXHIBIT “B”

Jamie Felsen

From: Jamie Felsen
Sent: Friday, September 24, 2021 2:22 PM
To: kband@nycourts.gov
Cc: Joseph Labuda; weiss@ny-bankruptcy.com; Jeremy Koufakis
Subject: RE: Star auto Sales v Filardo (App Div Docket No 2019-05817)

Mr. Band,

I am available for a call before 4 pm today after which time I have child commitments. I will work on drafting a formal opposition on NYSCEF.

One additional argument is that under CPLR 5015, the lower court who will render the judgment at the inquest can later modify it. The lower court is in the best position to decide if an inquest should proceed and it already decided it wants to proceed. The lower court can modify the judgment at a later date if necessary. Any modification to the judgment will merely be an increase to the judgment.

Jamie S. Felsen - Partner
Milman Labuda Law Group PLLC
3000 Marcus Ave., Suite 3W8
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From: Jamie Felsen
Sent: Friday, September 24, 2021 2:05 PM
To: kband@nycourts.gov
Cc: Joseph Labuda <joe@mlaborlaw.com>; weiss@ny-bankruptcy.com; Jeremy Koufakis <jeremy@mmmlaborlaw.com>
Subject: RE: Star auto Sales v Filardo (App Div Docket No 2019-05817)

Mr. Band,

We are reviewing the papers now. The arguments in opposition include, but are not limited to:

1. The instant appeal was commenced by Plaintiff on April 19, 2019. Filardo has waited until now – more than two (2) years since the appeal was commenced – to seek a stay. This lengthy delay warrants denial of his motion for a stay.
2. Critically, the instant appeal has no connection to the Answer that the lower court struck. Indeed, the Answer that was struck concerns claims that are not the basis of this appeal. Therefore, there is no basis to stay the inquest. The determination of the appeal will merely address whether Star is entitled to damages in addition to those connected to the Answer that was stricken. However, importantly, the determination of the appeal will not limit the damages to which Star will be entitled at the inquest due to the stricken Answer. Star should not be prejudiced by having to wait to obtain a judgment and enforce that judgment merely because it may be entitled to an even larger judgment.

3. This motion filed the day before the inquest is par for the course by Filardo. It is respectfully submitted that Filardo intentionally waited until two (2) business days prior to the inquest to seek the instant stay as another ploy by Filardo to delay an eventual large judgment from being entered against him – which delay tactics he has engaged in throughout this case. Indeed, the conduct Filardo has engaged in throughout the litigation in the lower court was the basis for which his Answer was stricken.
4. Notably, the counsel that Filardo conveniently retained two (2) days ago, on September 22, 2021, Ronald D. Weiss, P.C., is the same counsel who has represented his wife, Francine Filardo, since January 2021 in a companion case seeking to hold Francine Filardo for unjust enrichment based on the theft of Douglas Filardo from plaintiff, Star Auto Sales of Queens LLC v. Francine Filardo, pending in Supreme Court Queens County, index no. 702350. Douglas Filardo was notified on August 24, 2021 about the inquest scheduled for September 27, 2021. It is respectfully submitted that Douglas Filardo has been in communication with Ronald D. Weiss, P.C. for many months, but he intentionally had Ronald D. Weiss, P.C. wait until the eve of the inquest to file a notice of appearance and request a stay as an additional delay tactic.
5. The trial court knows about this appeal and nevertheless scheduled the inquest. Notably, Filardo didn't ask the trial court to stay the inquest pending the appeal.

If you would like to discuss, my number is 516-303-1391.

Jamie S. Felsen - Partner
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From: Joseph Labuda <joe@mllaborlaw.com>
Sent: Friday, September 24, 2021 1:55 PM
To: Jamie Felsen <jamiefelsen@mllaborlaw.com>
Subject: FW: Star auto Sales v Filardo (App Div Docket No 2019-05817)

Joseph M. Labuda
Milman Labuda Law Group, PLLC
3000 Marcus Avenue, Ste. 3W8
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(516) 303-1380 - (direct)
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Management's Guide in Labor and Employment Law

From: Kenneth Band <kband@nycourts.gov>
Sent: Friday, September 24, 2021 1:53 PM
To: Joseph Labuda <joe@mllaborlaw.com>; dfilardo@ymail.com
Cc: weiss@ny-bankruptcy.com
Subject: RE: Star auto Sales v Filardo (App Div Docket No 2019-05817)

I'm adding Mr. Weiss to this email chain, I see it's his motion.

From: Kenneth Band
Sent: Friday, September 24, 2021 1:47 PM
To: joe@mllaborlaw.com; dfilardo@ymail.com
Subject: Star auto Sales v Filardo (App Div Docket No 2019-05817)

Dear Counselors:

I've just been asked to process the appended order to show cause, the papers are too big to email.

I'm going over the papers now. I'll be reaching out to you shortly, to get your respective positions on the proposed interim relief. If you have a preferred phone number you'd like me to try, let me know.

-Ken Band

Kenneth Band, Esq.
Associate Deputy Clerk
Supreme Court, Appellate Division, Second Judicial Department
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